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Joseph Story on the Role of Senators In an Impeachment Trial

In 1811, Joseph Story of Massachusetts was appointed to the United States Supreme Court. He was 32 years old. He stayed on the Court until his death in 1845. He may be the second most celebrated jurist ever to sit on the Court (after John Marshall).

Few books on the Constitution have been more influential than Story's multi-volume *Commentaries on the Constitution of the United States* (1833). His work has been cited hundreds of times by the Supreme Court of the United States and probably thousands of times by lower courts. The Supreme Court first cited Story's *Commentaries* in 1835; it cited him again as recently as June of this year. Joseph Story will be cited for as long as judges write opinions.

In light of recent events, we thought Story's statement on United States Senators and impeachment was particularly timely. The quotation below is from his *Familiar Exposition of the Constitution* (1840), a one-volume, popular abridgement of his longer work.

"Impeachments.

"The next clause respects the judicial power of the Senate to try impeachments. 'The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath, or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted, without the concurrence of two thirds of the members present.'

"The great objects to be attained . . . for the trial of impeachments, are impartiality, integrity, intelligence, and independence. If either of these qualities is wanting, the trial is essentially defective."

"The great objects to be attained in the selection of a tribunal for the trial of impeachments, are *impartiality, integrity, intelligence, and independence*. If either of these qualities is wanting, the trial is essentially defective.

"To insure *impartiality*, the body must be, in some degree, removed from popular power and passions, from the influence of sectional prejudices, and from the still more dangerous influence of party spirit.

"To secure *integrity*, there must be a lofty sense of duty, and a deep responsibility to God, as well as to future ages.

"To secure *intelligence*, there must be age, experience, and high intellectual powers and attainments.

"To secure *independence*, there must be numbers, as well as talents, and a confidence, resulting from permanency of place, dignity of station, and consciousness of patriotism.

"The Senate, from its very organization[*], must be presumed to possess all these qualities in a high degree, and, certainly, in a degree not surpassed by any other political body in the country.

"If it should be asked, why the power to try impeachments might not have been confined to a court of law of the highest grade, it may be answered, that such a tribunal is not, on various accounts, so fit for the purpose.

"If it should be asked, why the power to try impeachments might not have been confined to a court of law. . . , it may be answered, that such a tribunal is not . . . so fit for the purpose. In the first place, the offences to be tried are generally of a political character. . . "

"In the first place, the offences to be tried are generally of a *political character*, such as a court of law is not ordinarily accustomed to examine, and such as its common functions exclude. The Senators, on the contrary, necessarily become familiar with such subjects.

"In the next place, the strict course of proceedings, in courts of law, is ill adapted to the searching out of *political delinquencies*. . . ."

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Source: Joseph Story, A FAMILIAR EXPOSITION OF THE CONSTITUTION OF THE UNITED STATES §113 (1840 ed. reprinted by Regnery Gateway, 1986). In the original, the entire quotation is part of one paragraph; RPC broke the quotation into separate paragraphs. All emphases (shown by italics) were added by RPC. Of course, the asterisk within the brackets was added by RPC (see below).

*NOTE: When Story wrote the quoted text, United States Senators were elected by State legislatures and not by popular vote. The XVII Amendment to the Constitution, which provides for direct election of Senators, was adopted in 1913.